

## CALENDAR ITEM

96

A Statewide

02/20/15

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J. DeLeon

**CONSIDER EXECUTION OF A MEMORANDUM OF UNDERSTANDING WITH THE OCEAN PROTECTION COUNCIL, CALIFORNIA NATURAL RESOURCES AGENCY, CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE, CALIFORNIA FISH AND GAME COMMISSION, CALIFORNIA DEPARTMENT OF PARKS AND RECREATION, STATE WATER RESOURCES CONTROL BOARD, CALIFORNIA COASTAL COMMISSION, CALIFORNIA OCEAN SCIENCE TRUST, AND RESOURCES LEGACY FUND, RELATING TO IMPLEMENTATION OF THE CALIFORNIA MARINE LIFE PROTECTION ACT**

### BACKGROUND

The State of California completed designation of a network of Marine Protected Areas (MPAs) along the California coast as required by the Marine Life Protection Act (MLPA) (Fish & G. Code, § 2850 et seq.) in December 2012. While the California Fish and Game Commission has primary responsibility to implement the provisions of the MLPA, not all activities necessary to or beneficial in implementing the MPA network are the sole responsibility of any one entity. Many other agencies, including the State Lands Commission (Commission) are responsible for, and have undertaken, activities related to the protection, restoration, enforcement and management of natural resources of the State, including activities related to MPAs.

In an effort to memorialize and facilitate cooperative planning, implementation, and management of MPAs, the California Ocean Protection Council has developed a Memorandum of Understanding (MOU) that would bring together several state agencies with jurisdictional responsibilities important to MPA effectiveness as "Core Parties" to collaborative implementation, as well as several federal agencies as "Collaborating Entities" committed to sharing information and expertise relevant to MPA management. In addition, the MOU would renew the public-private partnership among the California Natural Resources Agency, California Department of Fish and Wildlife, and the Resources Legacy Fund Foundation. The Resources Legacy Fund Foundation is an independent non-profit organization that supports and performs essential services to promote land, freshwater and marine conservation; its role in the MOU would be to assist the parties in achieving the implementation objectives of the MLPA by providing funding and other assistance.

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The MOU would provide a framework for the Commission's participation in collaborative efforts to implement the MPA network and to achieve the goals of the MLPA. As part of the MOU, the Commission would agree to cooperatively undertake implementation efforts and share information and expertise where relevant or necessary for that effort to be successful. These cooperative efforts could also include entering into regional or local agreements with other parties wishing to assist with MPA implementation.

Commission staff recognizes the importance of MPA implementation to the effectiveness and success of the MPA network and believes the proposed MOU would provide an effective framework to bring together commitments to assist with such efforts, including MPA monitoring, public education, enforcement and other aspects of implementation, and also to provide a coordinated approach to the identification and recruitment of regional MPA implementation partners. The Commission, by participating in the MOU, would join the other parties in building on past actions and relationships to facilitate effective, collaborative, and cost-effective implementation of the MPA network.

**OTHER PERTINENT INFORMATION:**

1. The staff recommends that the Commission find that the subject authorization to execute a Memorandum of Understanding does not have a potential for resulting in either a direct or reasonably foreseeable indirect physical change in the environment, and is, therefore, not a project in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15060, subdivision (c) (3) and 15378.

**EXHIBIT:**

- A. Memorandum of Understanding for Implementation of the California Marine Life Protection Act

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that the subject authorization to execute a Memorandum of Understanding is not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3) because the subject activity is not a project as defined by Public

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Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

**AUTHORIZATION:**

Authorize the Executive Officer or her designee to execute a Memorandum of Understanding, in substantially the form as shown on Exhibit A, among the State Lands Commission, Ocean Protection Council, California Natural Resources Agency, California Department of Fish and Wildlife, California Fish and Game Commission, California Department of Parks and Recreation, State Water Resources Control Board, California Coastal Commission, California Ocean Science Trust, and Resources Legacy Fund, relating to implementation of the California Marine Life Protection Act.

# **MEMORANDUM OF UNDERSTANDING FOR IMPLEMENTATION OF THE CALIFORNIA MARINE LIFE PROTECTION ACT**

## **I. OBJECTIVES**

- 1.1 By this Agreement the California Ocean Protection Council, California Natural Resources Agency, California Department of Fish and Wildlife, California Fish and Game Commission, California Department of Parks and Recreation, State Water Resources Control Board, California Coastal Commission, California State Lands Commission, California Ocean Science Trust, and Resources Legacy Fund (hereafter referred to as “Core Parties”) seek to memorialize their commitments to successful implementation of the network of marine protected areas (MPAs) established by the State of California pursuant to the Marine Life Protection Act (MLPA, California Fish and Game Code Section 2850 et seq.) and to implementation of the state’s Master Plan for the MLPA.
- 1.2 By this Agreement, the California Environmental Protection Agency, the United States Department of Commerce National Oceanic and Atmospheric Administration, including the Office of National Marine Sanctuaries, United States Department of the Interior National Park Service, United States Department of Defense, and United States Coast Guard (hereafter referred to as the “Collaborating Entities”), seek to memorialize their commitments to share information and expertise with the Core Parties where relevant for the purpose of ensuring successful implementation of the network of MPAs. The signatories to this Memorandum of Understanding (MOU) may be referred to as Parties.

## **II. RECITALS**

- 2.1 The state completed designation of a network of MPAs along the California coast as required by the MLPA in December 2012. By a previous agreement, the Natural Resources Agency, Department of Fish and Wildlife, and Resources Legacy Fund Foundation entered into a public-private partnership for that process. Public and private entities, including some of the Parties, have undertaken activities to cooperate in the protection, restoration, enforcement and management of natural resources of the state, and by this agreement seek to build on those cooperative actions and relationships to facilitate effective, collaborative, and cost-effective implementation of the MPA network.
- 2.2 The Parties to this agreement recognize the importance and high priority of cooperative actions to effectively implement the MPA network created pursuant to the MLPA. Key areas of agreement among the Parties include recognition of the value of regional or statewide implementation partners and resources to assure the institutional and fiscal sustainability of MPA implementation efforts.

- 2.3 The Parties further recognize the importance of MPA implementation to the effectiveness of the MPA network designated by the California Fish and Game Commission pursuant to the MLPA and by this MOU seek to bring together commitments to assist with such efforts, including MPA monitoring, public education, enforcement and other aspects of implementation. The Parties also recognize a need for assistance in managing and coordinating the MPA implementation framework consistently with the Master Plan framework. Such efforts will be of critical assistance to the state in effectively and efficiently coordinating and managing MPA implementation.
- 2.4 Given the need for cooperative and coordinated efforts to implement the MPAs designated pursuant to the MLPA, the Core Parties, by this MOU intend and agree to cooperatively undertake implementation efforts, and the Collaborating Entities agree to share information and expertise where relevant or necessary for that effort to be successful. These cooperative efforts may include entering into regional or local agreements with other parties wishing to assist with MPA implementation. This MOU is meant to provide a framework for the coordination of commitments of the Parties to aspects of MPA implementation including monitoring, enforcement, public information and public education and also to provide a coordinated approach to the identification and recruitment of regional MPA implementation partners.
- 2.5 The Parties to this agreement desire that participation in implementation of the MPA network be as inclusive as possible, involving all willing and able federal, tribal, state and local governments as well as universities, coastal businesses, conservation organizations, fishing interests and fishery organizations.
- 2.6 Effective implementation of the MPA network is a statewide undertaking requiring a broad focus and comprehensive approach on the part of all entities having a role in implementation.
- 2.7 In addition to a statewide approach, effective implementation of the MPA network will require regionally based and local initiatives and agreements to enable implementation actions by a wide range of entities willing and able to perform implementation activities, including governments at the tribal, federal, state, and local level, fishery organizations, fishermen, coastal businesses or business organizations, conservation organizations, charitable foundations and others.
- 2.8 One mechanism for supporting MPA implementation is through local or regional MPA Community Collaboratives. Community Collaboratives include governmental agencies (city, county, state, federal, and tribal), organizations, associations, and institutions that

communicate regularly about the MPAs in a particular area. Local communities can use the Community Collaboratives as: (1) a way to work on site-specific projects more effectively, (2) a forum to communicate with state agencies and key partners about any issues or concerns occurring on-the-ground, and (3) a way to receive information about monitoring efforts, enforcement updates, and outreach & education initiatives from agencies and partners.

- 2.9 The Parties to this agreement desire to create a model for the Nation for effective and inclusive implementation of the coastwide MPA network created by the State of California pursuant to the MLPA.

### **III. PARTIES**

- 3.1 The Ocean Protection Council (OPC), consisting of the Secretary of the California Natural Resources Agency, Secretary for Environmental Protection, Chair of the State Lands Commission, two legislative members and two public members, was created by the California Ocean Protection Act of 2004. OPC is tasked with coordinating the activities of ocean-related agencies to improve the effectiveness of state efforts to protect ocean resources and establishing policies to coordinate the collection and sharing of scientific information related to coast and ocean resources.
- 3.2 The California Natural Resources Agency (Agency) is a State of California cabinet-level agency which seeks to restore, protect, and manage the state's natural, historical, and cultural resources for current and future generations using creative approaches and solutions based on science, collaboration, and respect for all the communities and interests involved. The Agency oversees the policies and activities of 25 departments, boards, commissions, and conservancies.
- 3.3 The California Department of Fish and Wildlife (Department) is a state agency within the Agency that is the trustee for fish and wildlife resources in the State of California and has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants and habitat necessary for biologically sustainable populations of those species. The Department is also responsible for management of specific lands and waters under their ownership. With respect to MPAs, the Department seeks to accomplish the objectives of the MLPA through management of cooperative implementation of the coastwide MPA network in a collaborative, cost-effective manner consistent with the policies of the MLPA and the Department's public trust responsibilities.
- 3.4 The California Fish and Game Commission (Commission) is a state agency within the Agency whose mission is to ensure the long term sustainability of California's fish and

wildlife resources. The Commission is responsible for hunting and fishing regulations and oversees the establishment of wildlife areas, ecological reserves, and the designation of MPAs under the MLPA.

- 3.5 The California Department of Parks and Recreation (State Parks) is a state agency within the Agency whose mission is to provide for the health, inspiration, and education of the people of the California by helping to preserve the state's extraordinary biological diversity, protecting its most valued natural and cultural resources, and creating opportunities for high-quality outdoor recreation. As a trustee agency, State Parks is responsible for managing almost one-third of California's coastline within their State Parks, including dune ecosystems, beaches, coastal wetlands, estuaries, and nearshore marine areas. .
- 3.6 The State Water Resources Control Board (Water Board) is a state agency within the California Environmental Protection Agency whose mission is to preserve, enhance, and restore the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations. The Water Board oversees nine California Regional Water Quality Control Boards (Regional Boards). The mission of the Regional Boards is to develop and enforce water quality objectives and implementation plans that will protect the State's waters, recognizing local differences in climate, topography, geology, and hydrology.
- 3.7 The California Coastal Commission (Coastal Commission) is an independent, quasi-judicial state agency. The Coastal Commission's mission is to protect, conserve, restore, and enhance environmental and human-based resources of the California coast and ocean for environmentally sustainable and prudent use by current and future generations. The Coastal Commission, in partnership with coastal cities and counties, plans and regulates the use of land and water in the coastal zone. Development activities, which are broadly defined by the Coastal Act to include (among others) construction of buildings, divisions of land, and activities that change the intensity of use of land or public access to coastal waters, generally require a coastal permit from either the Coastal Commission or the local government.
- 3.8 The California State Lands Commission is an independent, quasi-legislative state agency that has exclusive control, jurisdiction and administration authority over all ungranted tide and submerged lands and the reversionary and residual interest of the State as to public trust lands legislatively granted to local governments. The Commission serves the people of California by providing stewardship of the lands, waterways, and resources entrusted to its care through economic development, protection, preservation, and restoration. Its members include the Lieutenant Governor, the State Controller and the Governor appointed State Director of Finance.

- 3.9 The California Ocean Science Trust (OST) is a nonprofit public benefit corporation established pursuant to the California Ocean Resources Stewardship Act of 2000 to encourage coordinated, multi-agency, multi-institution approaches to applying ocean science to policies and management. The Marine Protected Areas Monitoring Enterprise is being developed under the auspices of the OST to, among other things, enable assessment of the condition and functioning of the MPAs and inform MPA management.
- 3.10 The Resources Legacy Fund (RLF) is an independent non-profit organization that supports and performs essential services to promote land, freshwater and marine conservation. Consistent with its mission, RLF has developed and administered many strategic charitable programs, including one which is designed to achieve significant advances in coastal and marine conservation in California. RLF seeks to assist the parties to achieve the implementation objectives of the MLPA by providing funding and other assistance.
- 3.11 The California Environmental Protection Agency (Cal/EPA) is a State of California cabinet-level agency whose mission is to restore, protect, and enhance the environment to ensure public health, environmental quality, and economic vitality. Cal/EPA is charged with developing, implementing, and enforcing the state's environmental protection laws that ensure clean air, clean water, clean soil, safe pesticides, and waste recycling and reduction. Cal/EPA also coordinates the state's climate change activities and oversees the policies and activities of six departments, boards, and offices.
- 3.12 The United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) is a federal science agency whose mission is to understand and predict changes in Earth's environment and conserve and manage coastal and marine resources to meet the nation's economic, social, and environmental needs. The agency works to achieve five strategic goals: (1) protect, restore, and manage the use of coastal and ocean resources through an ecosystem approach to management; (2) understand climate variability and change to enhance society's ability to plan and respond; (3) serve society's needs for weather and water information; (4) support the nation's commerce with information for safe, efficient, and environmentally sound transportation; and (5) provide critical support for NOAA's mission. Six line offices execute the programs required to achieve these goals: the National Weather Service; the National Marine Fisheries Service; the National Ocean Service; the National Environmental Satellite, Data, and Information Service; the Office of Oceanic and Atmospheric Research; and the Office of Program Planning and Integration. The Office of National Marine Sanctuaries manages 13 sanctuaries and one national monument including four national marine sanctuaries off the California coast.



- 3.13 The United States National Park Service (Park Service) is a federal agency within the United States Department of the Interior whose mission is to preserve unimpaired the natural and cultural resources and values of the national park system for the enjoyment, education, and inspiration of this and future generations. The Park Service cooperates with partners to extend the benefits of natural and cultural resources conservation and outdoor recreation throughout this country and the world. The National Park System of the United States now comprises 390 areas covering more than 84 million acres in 49 states, the District of Columbia, American Samoa, Guam, Puerto Rico, Saipan, and the Virgin Islands.
- 3.14 The United States Department of Defense (DOD) trains, tests, and equips combat-ready military forces needed to win and deter wars, to protect the security of our country and to maintain freedom of the seas. The Secretary of Defense is responsible for the formulation and implementation of policies and programs that are consistent with national security policies and objectives. The DOD includes the Department of the Army, the Department of the Air Force, and the Department of the Navy. The Department of the Navy consists of two uniformed Services; the United States Navy and The United States Marine Corps.
- 3.15 The United States Coast Guard (Coast Guard) is one of the five armed forces of the United States and the only military organization within the Department of Homeland Security. The Coast Guard is an adaptable, responsive military force of maritime professionals whose legal authorities, assets, geographic diversity and partnerships provide a presence along rivers, in ports, coastal regions and on the high seas. Coast Guard presence and impact is local, regional, national and international, making the Coast Guard a unique instrument of maritime safety, security and environmental stewardship.

#### **IV. GENERAL TERMS**

- 4.1 The Parties to this MOU recognize that not all activities necessary to or beneficial in implementing the MPA network designated by the Fish and Game Commission pursuant to the MLPA and the state's Master Plan for the MLPA are the sole responsibility of any one entity and the Parties commit to collaborative efforts to implement the MPA network and to achieve the goals of the MLPA. To the extent that law or regulations place sole or primary responsibility for particular aspects of MLPA implementation with one entity, the efforts and resources of that entity can and should be supplemented by cooperative efforts of state and federal agencies, non-government organizations and others.

- 4.2 The Parties recognize that individually and as a group they each have important and valuable roles to play in implementing the state's MPA network and the Parties therefore commit to cooperative efforts to perform their respective implementation responsibilities.
- 4.3 Consistent with existing law and with all other statutory, common law public trust doctrine, and jurisdictional obligations, the Parties with permitting or leasing jurisdiction over existing or new activities that may impact individual MPAs, or the MPA network as a whole, commit to avoiding or reducing such significant impacts, and to mitigating any impacts that cannot be avoided; and commit to sharing information about potential impacts to MPAs with one another. Nothing in this MOU shall be deemed to override or otherwise limit decision-making authority vested solely in one or more of the signatory Parties.
- 4.4 In recognition of the need for regionally based implementation initiatives, the Core Parties to this MOU commit, consistent with the mission of the respective Parties, to cooperatively identify and engage with other potential statewide regional, and local implementation partners who will take on responsibilities for important aspects of MPA implementation. The Parties agree to memorialize additional specific commitments and undertakings of other implementation partners in regional or local agreements covering each of the geographical regions in California in which MPA networks have been designated by the state. The regional or local agreements can provide a vehicle to formally identify MPA implementation partners and to set forth commitments to achieve cost-effective and collaborative accomplishment of the goals of the MLPA. As agreements are entered into by any of the Parties with regional implementation partners, copies of the agreements will be provided to the other Parties for their information and will be attached to this MOU as exhibits.
- 4.5 Neither this MOU nor any provision hereof may be waived, modified, amended, or discharged except by an instrument in writing signed by the Parties.
- 4.6 This MOU constitutes the entire agreement of the Parties with respect to the matters set forth herein and it supersedes all prior or contemporaneous understandings or agreements among the Parties with respect to the subject matter of the MOU.
- 4.7 Nothing contained in this MOU shall be construed as binding any Party to expend in any one fiscal year any sum in excess of appropriations made by Congress or California Legislature for the purposes of this MOU for that fiscal year.
- 4.8 If a court of competent jurisdiction determines that a provision included in this MOU is legally invalid, illegal, or unenforceable, and such decision becomes final, such provision

shall be deemed to be severed and deleted from this MOU and the balance of the MOU shall be reasonably interpreted to achieve the intent of the Parties. The Parties further agree to replace such void or unenforceable provision of this MOU with a valid and enforceable provision that will achieve, to the extent possible, the purposes of the void or unenforceable provision.

- 4.9 This MOU and any amendment may be executed in two or more counterparts, and by each Party on a separate counterpart, each of which, when executed and delivered, shall be an original and all of which together shall constitute one instrument, with the same force and effect as though all signatures appeared on a single document. Amendments to this MOU when executed by the Parties may be added as operative provisions by attachment(s) to the MOU without the necessity for re-circulation and signature of the original MOU in its entirety.
- 4.10 None of the Parties may assign any rights granted by this MOU without prior written approval of the other Parties. Approval of assignment may be granted or withheld in any Party's reasonable discretion. Upon execution of this MOU by three or more Parties, it shall be effective as to those Parties and shall be in effect from that date through December 31, 2020, at which time the Parties will confer on necessary or appropriate revisions to the agreement and may agree to an extension of the agreement.
- 4.11 Consistent with California and Federal Tort Claims Acts (Acts) each Party accepts responsibility for any property damage, injury or death that occurs in connection with its implementation of this MOU where the property damage, injury, or death is caused by its own negligent acts or omissions, or willful misconduct, or the negligent acts, omissions, or willful misconduct of its officers, employees and/or agents acting within the scope of their employment, agency or official capacity, to the fullest extent permitted by law. If there is a conflict between this MOU and the application of either the federal or state Torts Claims Acts, the Acts shall prevail.
- 4.12 Any Party shall be entitled to withdraw from this MOU by providing a 10-day written notice to the other Parties.
- 4.13 The only remedy of any Party for a breach of this MOU is withdrawal from the MOU as set forth herein. Under no circumstances shall any Party be liable to any other Party in connection with this MOU for any direct, indirect, incidental, or consequential damages or be entitled to any legal or equitable relief other than termination of this MOU.
- 4.14 Nothing in this MOU shall be deemed to create a partnership or any other trust relationship between the Parties, it being expressly understood and agreed that the Parties obligations to each other under this MOU are not fiduciary in nature.

- 4.15 Each signatory below attests that he or she is duly authorized to execute this MOU on behalf of the Party he or she represents.

## **V. SPECIAL TERMS**

- 5.1 The Core Parties commit to frequent and open communication on their respective implementation efforts. This shall include quarterly milestones meetings with interested private persons or parties and responsive information being provided upon inquiry.
- 5.2 At least twice each year the Chair of the Ocean Protection Council will convene senior policy officials to address the accomplishments of MPA implementation efforts and to discuss the performance of the parties in achieving the purposes of the MLPA and this MOU. The Chair of the OPC may engage and convene representatives of other public or private entities, including RLF, at these meetings to address the accomplishment of MPA implementation efforts and to discuss the performance of the Parties in achieving the purposes of the MLPA and this MOU. At the meetings, each policy official will report on their activities representing progress toward or impediments to effective implementation of the MPA network and discuss potential impacts to local MPAs or the statewide MPA network that may fall under the jurisdiction of one or more of the Parties.
- 5.3 The Ocean Protection Council will annually provide to all Parties a written summary of activities of the Core Parties have taken to implement the MPA network and will especially highlight cooperative actions taken as a result of this MOU. If Collaborating Entities have also participated in furthering MLPA implementation efforts, that work will be highlighted as well.
- 5.4 The Core Parties, and to the extent relevant, the Collaborating Entities, will inform, engage the support of, and coordinate with other state, federal, and local government agencies with important coastal or marine responsibilities and jurisdiction. These agencies include but are not limited to:
- a. United States Bureau of Land Management
  - b. United States Bureau of Indian Affairs
  - c. United States Army Corps of Engineers
  - d. California Native American Heritage Commission
  - e. California Coastal Conservancy
  - f. San Francisco Bay Conservation and Development Commission
  - g. North Coast Regional Water Quality Control Board

- h. San Francisco Bay Regional Water Quality Control Board
- i. Central Coast Regional Water Quality Control Board
- j. Los Angeles Regional Water Quality Control Board
- k. Santa Ana Regional Water Quality Control Board
- l. San Diego Regional Water Quality Control Board
- m. Federally recognized tribes and tribal communities
- n. MPA Community Collaboratives

5.5 Within available funding and consistent with legal constraints on expenditures of funds, the Core Parties commit to designate personnel at sufficient staffing levels and expertise to accomplish those tasks to which they have committed in implementing the MPA network.

5.6 The Parties agree in good faith to work together to fulfill the objectives of this MOU. Toward that end, each Party will designate a policy-level official to engage with the other parties in accomplishing the purposes of this MOU, to act as the point of contact for the Party in connection with this MOU and to be responsible for that party's activities in implementing the MPA network, resolving issues relating to areas of responsibility or conflicts in management policy, and fostering effective inter-agency coordination.

**IN WITNESS WHEREOF**, the Parties have caused this MOU to be executed by their duly authorized representatives.

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John Laird  
Chair, California Ocean Protection Council  
Secretary, California Natural Resources Agency

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Cat Kuhlman  
Executive Director Ocean Protection Council/  
Deputy Secretary for Oceans and Coastal Policy,  
California Natural Resources Agency

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Charlton H. Bonham  
Director  
California Department of Fish and Wildlife

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Date



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Sonke Mastrup  
Executive Director  
California Fish and Game Commission

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Date

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Skyli McAfee  
Executive Director  
California Ocean Science Trust

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Michael Mantell  
President  
Resources Legacy Fund

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Date

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Lisa Mangat  
Acting Director  
California Department of Parks and Recreation

Date

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Thomas Howard  
Executive Director  
State Water Resources Control Board

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Charles Lester  
Executive Director  
California Coastal Commission

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Jennifer Lucchesi  
Executive Officer  
California State Lands Commission

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Date

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Matt Rodriquez  
Secretary  
California Environmental Protection Agency

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Date